

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* Kirk, Minors.

UNPUBLISHED  
October 20, 2016

No. 332346  
Kalamazoo Circuit Court  
Family Division  
LC No. 2014-000351-NA

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Before: SHAPIRO, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court order terminating his parental rights to the minor children, BK, RK, and DK, under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (c)(ii) (other conditions exist continue to exist and where parent has not rectified the conditions), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that the child will be harmed if returned to the parent). We affirm.

A petition was filed in this matter on September 29, 2014, alleging that DK tested positive for cocaine at his June 20, 2014 birth and that his mother had tested positive for cocaine on three dates shortly after DK's birth. All three children were released to respondent father's care and under specific conditions including that drugs could not be used, kept, sold, or traded in the home, and that respondent father must ensure that the children were not left unsupervised with mother.

In October 2014, father left the children unsupervised with mother on two occasions, while she was under the influence of marijuana. Also in October 2014, a caseworker with the Department of Health and Human Services (DHHS) observed marijuana in the parties' home, the home smelled like marijuana, and mother tested positive for THC. Father admitted to smoking marijuana on October 24, 2014, in the home. As a result, the children were removed from the parents' care and placed with an uncle. In December 2014, the children were moved to placement with their grandmother and step-grandfather.

Respondent father continued to abuse drugs after the children were removed from his care. He repeatedly missed drug screens, and, when he did participate in drug screening, father often produced screens that were positive for cocaine or THC. Respondent father also failed to comply with the service plan's requirements that he attend substance abuse counseling consistently. Respondent father did not attend group counseling sessions, as required, and while he did attend most individual sessions, he was not honest in his sessions. His behavioral health evaluation indicated that respondent father did not believe that he had a substance abuse

problem. Additionally, although respondent father did attend some parenting visits, his visits eventually became irregular and he developed housing issues during the case, where he no longer had a stable address but was staying with various friends. Thus, on December 2, 2015, a petition for the termination of parental rights was filed. It was requested that the court terminate the parental rights of father and mother to BK and RK, and that the court terminate the parental rights of father, mother, and any other putative fathers to DK.<sup>1</sup>

A termination hearing was held on March 9 and March 18, 2016, when DK was 1 year old, RK was 3 years old, and BK was 4 years old. The principal evidence regarding respondent father concerned his substance abuse, lack of suitable housing, and inability to financially support the children. Following the termination hearing, the trial court found that grounds for termination were established under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). The trial court also found that termination was in the children's best interests.

“In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review the trial court's determination for clear error. *Id.* “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses.” *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. Termination is proper under MCL 712A.19b(3)(c)(i) where the conditions that led to adjudication continue to exist. This Court has held that termination is proper where “the totality of the evidence amply supports that [the respondent] had not accomplished any meaningful change in the conditions” that led to the adjudication. *In re Williams*, 286 Mich App 253, 272; 779 NW2d 286 (2009).

Here, the primary condition that led to adjudication was substance abuse and the record supports that, at the time of termination, the condition that led to adjudication continued to exist. Respondent father repeatedly tested positive for cocaine and THC throughout the duration of this case and repeatedly failed to appear for drug screens. His positive tests continued up until the termination hearing. Respondent father attended some substance abuse treatment programs at some points in the case but his attendance was inconsistent, and the caseworker testified that she did not believe that respondent father gained any benefit from the services because he continued to test positive for cocaine and marijuana. Thus, the record establishes that respondent father did not accomplish “any meaningful change” regarding substance abuse. *Williams*, 286 Mich App at 272.

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<sup>1</sup> No affidavit of paternity was filed with respect to DK, although both parties affirmed that respondent father was DK's biological father. Thus, the trial court appropriately terminated any putative father's parental rights to DK pursuant to MCL 712A.19b(3)(a)(i) and (ii).

Further, the record does not support that respondent father would be able to rectify his substance abuse or lack of compliance within a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(i). When determining what constitutes a reasonable time for the conditions to be rectified, we must focus on how long it will take a respondent to improve and how long the involved children can wait for the improvement. *In re Dahms*, 187 Mich App 644, 648; 468 NW2d 315 (1991). The Legislature did not intend children to be left in foster care indefinitely. *Id.* at 647.

Respondent father had a long history of substance abuse. His behavioral health evaluation indicated that father did not believe he had a substance abuse problem, and the record supports that respondent father did not take advantage of the services offered by DHHS. Respondent father admitted to only attending half of his required services. Moreover, despite the services offered by DHHS, respondent father continued to test positive for marijuana and cocaine throughout the duration of this case. He admitted that the last time he used drugs was March 7 or March 8, 2016, about two days before the termination hearing commenced. Because respondent father did not believe he had a substance abuse problem, did not complete any meaningful progress with his substance abuse treatment, and continued to test positive for drugs throughout the duration of this case, the record does not support that respondent father would be able to rectify his substance abuse or lack of compliance within a reasonable time considering the ages of the children. MCL 712A.19b(3)(c)(i); *VanDalen*, 293 Mich App at 139.<sup>2</sup>

Next, respondent asserts that the trial court erred in finding that termination was in the best interests of the children. We review the trial court's decision regarding the child's best interests for clear error. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

“Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights.” *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). When determining the best interests of the child, the focus should be on the child, not the parent, *In re Moss*, 301 Mich App at 87, and the trial court must consider the record as a whole, *In re JK*, 468 Mich 202, 211; 661 NW2d 216 (2003). The trial court may consider “the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home.” *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). It may also consider the length of time the child was in foster care, the likelihood that the child could be returned to the parent's home in the foreseeable future, *In re Frey*, 297 Mich App 242,

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<sup>2</sup> Because we conclude that there was no error in finding grounds for termination of parental rights under subsection (c)(i), we need not consider whether there were alternative grounds under MCL 712A.19b(3)(c)(ii), (g), and (j). *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009) (finding that, where “at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision”). However, respondent father's admitted lack of suitable housing and his financial instability, combined with his continued substance abuse would provide a suitable basis for termination under MCL 712A.19b(3)(c)(ii), (g), and (j).

248-249; 824 NW2d 569 (2012), whether the child is safe with the parent and is thriving in foster care, *In re VanDalen*, 293 Mich App at 141, “a parent’s history of domestic violence, the parent’s compliance with his or her case service plan, the parent’s visitation history with the child, the children’s well-being while in care, and the possibility of adoption,” *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

The trial court found that termination of father’s rights was in the children’s best interests because of respondent father’s substance abuse issues. The record supports that respondent father was unable to provide proper care to the children because of his issues, despite the 17 months of services that had been provided by DHHS. The children were all under the age of four years and had been involved in the court system for almost their entire lives. Accordingly, the evidence established that termination of father’s parental rights was in the children’s best interests.

Father also argues on appeal that the trial court erred by failing to consider that the children were placed with father’s relative when it made its best-interest ruling. “[A] child’s placement with relatives weighs against termination” and the fact that a child is living with a relative is an “explicit factor” that must be considered when determining whether termination is in the best interests of the child. *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010). Here, the record reflects that the trial court explicitly addressed relative placement. Accordingly, this argument has no merit.

Affirmed.

/s/ Douglas B. Shapiro  
/s/ Joel P. Hoekstra  
/s/ Deborah A. Servitto